

# **U.S. ARMY PROCUREMENT POLICY ALERT BULLETIN**

**NO. 96-006**

**June 10, 1996**

**The enclosed documents are forwarded for your information and any necessary implementation in advance of formal publication of a Federal Acquisition Circular (FAC) or Defense Acquisition Circular (DAC). There will be no Department of the Army-level supplementation or implementing instructions.**

## **ENCLOSURES:**

- 1. DPP Memorandum, Subject: Leasing of Commercial Vehicles and Equipment, D.L. 96-007, April 18, 1996.**
- 2. DPP Memorandum, Subject: Length of Contracts, May 17, 1996.**
- 3. DPP Memorandum, Subject: Institutions of Higher Education. D.L. 96-012, May 21, 1996.**
- 4. DPP Memorandum, Subject: Submission of Vouchers to Disbursing Office, D.L. 96-013, May 21, 1996.**
- 5. DPP Memorandum, Subject: Extension to Class Deviation -- National Industrial Security Program Operating Manual, DAR Tracking Number: 96-00005, May 30, 1996.**
- 6. Director of Electronic Commerce. EC/EDI, Policy Letter, Subject: Use of Solicitation Provisions and Contract Clauses Reference Numbers and Dates Only in Simplified Acquisitions in Lieu of Incorporation of Mandatory Clauses in Full Text, May 10, 1996.**

**This bulletin is issued by the U.S. Army Contracting Support Agency. Comments or questions should be referred to the Policy and Procedures Division. SFAE-CSA-PP, 5109 Leesburg Pike, Suite 916, Falls Church, Virginia 22041**

**Telephone: (703) 681-7563/DSN 761-7563**

**Fax: (703) 681-7580/DSN 761-7580**

**Email: [kellyr@sarda.army.mil](mailto:kellyr@sarda.army.mil)**

**cc: [colanget@sarda.army.mil](mailto:colanget@sarda.army.mil)**

**Bulletin 96-006 consists of 19 pages.**

**Release Approved By: TWC**



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20310-3000



18 APRIL 1996

In reply refer to  
DFARS Case: 96-D302  
D.L. 96-007

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN (RD&A) /ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTOR, PROCUREMENT POLICY ASA (RD&A) / SARD-PP  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Leasing of Commercial Vehicles and Equipment

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the FY96 Defense Authorization Act (Pub. L. 104-106), which revises 10 U.S.C. 2401a to permit the use of leasing in the acquisition of commercial vehicles and equipment.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

## **SUBPART 207.4--EQUIPMENT LEASE OR PURCHASE**

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### **207.470 Statutory Requirement[s].**

#### **[(a) Limitation on contracts with terms of 18 months or more.]**

As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has--

—  
(a)[(1)] Considered all costs of such a contract (including estimated termination liability);  
and

—  
(b) [(2)] Determined in writing that the contract is in the best interest of the Government.

#### **[(b) Leasing of commercial vehicles and equipment.]**

**Except as provided in paragraph (a) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 2401a)]**



**OFFICE OF THE UNDER SECRETARY OF DEFENSE**  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20310-3000



May 17, 1996

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN (RD&A) /ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTOR, PROCUREMENT POLICY ASA (RD&A) / SARD-PP  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Length of Contracts

Complex contracts containing basic and option periods of up to five years of requirements, especially when modified dozens of times during the course of performance, have proven difficult to administer and often generate confusion in the payment process. They have led to some of the many problem disbursements we experience each year. As we continue to streamline and reform our procurement process, the Department of Defense must find new and innovative ways to improve the administration, payment, and close out of our contracts. One way is to shorten the length of our contracts when feasible.

One approach to shortening contracts is to exercise future contract options as separate contracts. For example, the first option period in a contract for a basic period and two option periods could be unilaterally exercised by the contracting officer as a separate contract with a different contract number than the base period's contract. The same terms, conditions, and contract clauses which applied to the basic period would also be used to form the successive contract for the option period.

Since the assignment of a new contract number in lieu of a modification number is solely for administrative convenience, separate contracts for options do not constitute new procurements. The contract for the option so exercised would also contain the unexercised option for the second option period, which would subsequently be exercised in the same manner as the first option. This approach has the additional benefit of enabling the initial contract whose performance has been completed to be closed out at an earlier date, since subsequent options will have been awarded as separate contracts.

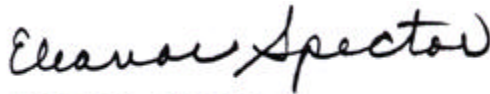
When a priced option is unilaterally exercised as a new contract in this manner, it must contain the terms and conditions included in the contract at the time of initial award, because the option prices are based in part on those original terms and conditions. Unfortunately, at this time some automatic contract writing systems are only able to write new contracts using general provisions in effect on the date a new contract is awarded. Consequently, options awarded as new contracts may require issuance by means other than the agency's automatic contract writing system.

While conceivably useful for a variety of requirements and contract types, this approach should not be applied to procurements where its benefits are marginal. For example, it need not be applied to contracts that are solely for services, nor to options that add quantities that do not extend the term of the

contract. One possible alternative for these and similar situations may be greater use of delivery order contracts.

Options exercised as new contracts may be best suited to major weapons systems contracts that are not approved for multiyear contracting, but nevertheless contain options for discrete outyear buys, funded from a variety of appropriations. A draft provision designed for that purpose is attached. It should be viewed as a starting point for considering ways to write contracts that are less massive and more easily administered.

I strongly urge you to structure solicitations for fixed price contracts for major weapons systems, particularly those with an estimated value of \$25 million or greater (including options), so that their option periods can be exercised as separate contracts. This should be done solely as an administrative measure, to help prevent problem disbursements and improve contract administration and close out.

A handwritten signature in black ink, reading "Eleanor R. Spector". The signature is fluid and cursive, with the first name "Eleanor" and last name "Spector" clearly distinguishable.

Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

## SEPARATE CONTACT BREAK OUT

(a) For administrative convenience, at the time the first option is exercised, the Government reserves the right to break-out the first option and all remaining unexercised options as a separate contract that is completely detached from this contract \_\_\_\_\_ for purposes of government payments for goods or services. The goods or services acquired under the terms of this base contract \_\_\_\_\_ will remain solely under this contract for purposes of government payment.

(b) This separate contract break-out shall occur as part of and pursuant to the option exercise provisions established in \_\_\_\_\_ and shall incorporate the same terms and conditions set forth in this contract \_\_\_\_\_, except for any necessary administrative tailoring.

(c) This separate contract break-out award process is also applicable to the exercise of all subsequent options and a similar clause will be included in each separate contract as appropriate.



**OFFICE OF THE UNDER SECRETARY OF DEFENSE**  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20310-3000



21 MAY 1996

In reply refer to  
DFARS Case: 96-D305  
D.L. 96-012

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN (RD&A) /ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTOR, PROCUREMENT POLICY ASA (RD&A) / SARD-PP  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Institutions of Higher Education

We have amended the Defense Federal Acquisition Regulation Supplement to implement Section 541 of the Fiscal Year 1996 National Defense Authorization Act (Pub. L. 104-106) as it applies to contracts. Section 541 provides that no funds available to the Department of Defense may be provided by grant or contract to any institution of higher education that has an anti-ROTC policy.

This interim rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

**DFARS Case 96-D305**  
**Interim Rule**

**Part 209 - Contractor Qualifications**

1. Subpart 209.4 is amended to revise Section 209.470, as follows:

**Subpart 209.4 -- DEBARMENT, SUSPENSION, AND INELIGIBILITY**

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**209.470 Military recruiting on campus.**

**209.470-1 Policy**

(a) [(1)] Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes--

—  
[(i)] (1) Entry to campuses or access to students on campuses; or

—  
[(ii)] (2) Access to directory information pertaining to students.

[ (2) Section 541 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 983) provides that no funds appropriated or otherwise available to DoD may be obligated by contract or by grant, including a grant of funds to be available for student aid, to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps, or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education. This prohibition applies to new contracts and all contract modifications. (See 243.105.) This prohibition shall cease to apply to that institution upon a determination by the Secretary that the institution no longer has an anti-ROTC policy.]

(b) Institutions of higher education that are determined under 32 CFR Part 216 to have the policy or practice in paragraph (a) [(1) or (a) (2)] of this subsection shall be listed as ineligible on the List of Parties Excluded from Federal Procurement [and Nonprocurement] Programs published by the General Services Administration. (See FAR 9.404).

(c) In cases where a determination is made under 32 CFR Part 216 that specific subordinate elements of an institution of higher education, rather than the institution as a whole, have the policy or practice in paragraph (a) [(1) or (a) (2)] of this subsection, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

**209.470-2 Procedures.**

(a) Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with ineligible



contractors.

(b) After a determination of ineligibility [**under 209.470-1(a)(1)**], departments and agencies shall make no further payments under existing contracts with the institutions, and shall initiate termination action.

### **209.470-3 Contract clause.**

Use the clause at 252-209-7005, Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

\* \* \* \* \*

### **243.105 Availability of funds.**

(a) [i] 10 U.S.C. 2405 prohibits adjustments in price under a shipbuilding contract entered into after December 7, 1983, for a claim, request for equitable adjustment, or demand for payment under the contract, arising out of events occurring more than 18 months before submission of the claim, request, or demand.

**[(ii) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337) provides that no funds available to DoD may be provided by contract or contract modification, nor may contract payments be made, to an institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes--**

**(A) Entry to campuses or access to students on campuses; or**

**(B) Access to directory information pertaining to students. (See 209.470.)**

**(iii) Pursuant to 10 U.S.C. 983, no funds may be obligated by contract or contract modification to an institution of higher education that has an anti-ROTC policy. (See 209-470.) ]**



**OFFICE OF THE UNDER SECRETARY OF DEFENSE**  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20310-3000



21 MAY 1996

DP (DAR)

In reply refer to  
DFARS Case: 96-D007  
D.L. 96-013

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN (RD&A) /ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTOR, PROCUREMENT POLICY ASA (RD&A) / SARD-PP  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Direct Submission of Vouchers to Disbursing Office

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to allow the contract auditor to authorize direct submission of interim vouchers for provisional payment to the disbursing office for contractors with approved billing system.

The attached final DFARS rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

**DFARS Case 96-007**  
**Final Rule**

**PART 242--CONTRACT ADMINISTRATION**

\* \* \* \* \*

**SUBPART 242.8--DISALLOWANCE OF COST**

\* \* \* \* \*

**242.803 Disallowing costs after incurrence.**

*(a) Contracting officer receipt of vouchers.*

Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See 225.870-5(b) for invoice procedures.

*(b) Auditor receipt of voucher.*

(i) The contract auditor is the authorized representative of the contracting officer for----

(A) Receiving vouchers from contractors;

(B) Approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and administrative contracting officer instructions) and sending them to the disbursing office;

**(C) [Authorizing direct submission of interim vouchers for provisional payment to the disbursing office for contractors with approved billing systems.]**

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**(C)[(D)]** Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

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**(D)[(E)]** Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.

(ii) The administrative contracting officer---

(A) Approves all completion/final vouchers and sends them to the disbursing officer; and

(B) May issue or direct the issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed.



**OFFICE OF THE UNDER SECRETARY OF DEFENSE**  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20310-3000



30 MAY 1996

DP (DAR)

In reply refer to  
DAR Tracking Number: 96-00005

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN (R&D) /ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTOR, PROCUREMENT POLICY ASA (RD&A) / SARD-PP  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Extension to Class Deviation--National Industrial Security Program Operating Manual

I extend the authority for all military departments and defense agencies to use the attached text and clause that replaces all references to the DoD Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M) with the National Industrial Security Program Operating Manual (NISPOM).

The National Industrial Security Program was established by Executive Order 12819. The operating manual for the program replaces the DoD Industrial Security Manual.

I am extending the class deviation until the FAR is revised.

Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Fort. Belvoir

## PART 4--ADMINISTRATIVE MATTERS

\* \* \* \* \*

### SUBPART 4.4--SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

#### 4.401 Definitions.

No change.

#### 4.402 General.

(a) [Executive Order 12829, January 6, 1993 (58 FR 3479, January 8, 1993), entitled "National Industrial Security Program," establishes a program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. Executive Order 12829 amends] Executive Order 10865, February 20, 1960 (25 FR 1583, February 25, 1960), entitled "Safeguarding Classified Information Within Industry," ~~as amended by Executive Order 10909, January 17, 1961] (26 FR 508, January 20, 1961), forms the basis for agency regulations concerning safeguarding the release of classified information to U.S. industry.~~

(b) The Department of Defense (DOD) has incorporated ~~[National Industrial Security Program Operating Manual (NISPOM) incorporates] the requirements of these Executive Orders into the Defense Industrial Security Program (DISP), administered by the Defense Investigative Service, 1900 Half Street SW, Washington, DC 20324, (Director for Industrial Security). [The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission and the Director of Central Intelligence is responsible for issuance and maintenance of this Manual.] The following DOD publications implement the program:~~

[~~(1) National Industrial Security Program Operating Manual (NISPOM) (DOD5220.22-M)]~~

~~(1 [2]) Industrial Security Regulation (ISR) (DOD 5220.22-R).~~

(2) Industrial Security Manual for Safeguarding Classified Information (ISM) (DOD 5220.22-M).

(c) Procedures for the protection of information relating to foreign classified contracts awarded to U.S. industry, and ~~instructions for the protection of U.S. information~~ relating to classified contracts awarded to foreign firms, are prescribed in Section VIII of the ISR [Chapter 10 of the NISPOM].

(d) No change.

#### 4.403 Responsibilities of contracting officers.

(a) No change.

(1) No change.

(i) Determine if the agency is covered by the D[N]ISP; and

(ii) No change.

(2) No change.

(b) No change.

(1) Ensure that the classified acquisition is conducted as required by the D[N]ISP or agency procedures, as appropriate; and

(2) No change.

(c) No change.

(1) Agencies covered by the D[N]ISP shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized representative, is the approving official for the form and shall ensure that it is prepared and distributed in accordance with Section VII of the ISR.

(2) Contracting officers in agencies not covered by the D[N]ISP shall follow agency procedures.

#### **4.404 Contract clause.**

(a) through (c) - No change.

(d) If the contracting officer is not covered by the D[N]ISP and has prescribed a clause and alternates that are substantially the same as those at 52.204-2, the contracting officer shall use the agency-prescribed clause as required by agency procedures.

## **PART 27--PATENTS, DATA, AND COPYRIGHTS**

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### **SUBPART 27.2--PATENTS**

\* \* \* \* \*

#### **27.207 Classified contracts.**

##### **27.201-1 General.**

(a) No change.

(b) Upon receipt from the contractor of a patent application, not yet filed, that has been submitted by the contractor in compliance with paragraph (a) or (b) of the clause at 52.227-10, Filing of Patent Applications--Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application.. Upon a determination that the application contains classified subject matter, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the United States Patent Office in accordance with procedures in the Department of Defense Industrial Security [National Industrial Security Program Operating] Manual for Safeguarding Classified Security Information. If the material is classified "Secret"

or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days, pursuant to paragraph (a) of the clause.

\* \* \* \* \*

## **PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

\* \* \* \* \*

### **52.204-2 Security Requirements**

As prescribed in 4.404(a), insert the following clause in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in 4.404(d) apply:

#### **SECURITY REQUIREMENTS (xxx 1995)**

(a) No Change.

~~(b) The Contractor shall~~ comply with (1) the Security Agreement (DD Form 441), including the ~~Department of Defense~~ *[National] Industrial Security [Program Operating] Manual for Safeguarding Classified Information* (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) No change.

(d) No change.

(End of clause)



**OFFICE OF THE UNDER SECRETARY OF DEFENSE**  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20310-3000



10 MAY 1996

**MEMORANDUM FOR SENIOR ACQUISITION EXECUTIVES**  
**DIRECTORS OF DEFENSE AGENCIES**  
**DIRECTOR, DEFENSE PROCUREMENT**

**SUBJECT: Policy Letter -- Use of Solicitation Provisions and Contract Clauses Reference Numbers and Dates Only in Simplified Acquisitions in Lieu of Incorporation of Mandatory Clauses in Full Text**

On November 14, 1995, a policy letter was issued which required the incorporation by reference, citing the clause number and date, of provisions/clauses in FACNET transactions. We have received a number of questions concerning this guidance. This memorandum supersedes that memorandum in its entirety and is intended to respond to those questions.

All requests for quotations (transaction set ANSI X12.840) and orders/contracts (transaction set ANSI X12.850) issued electronically through a FACNET certified system shall normally incorporate the applicable FAR/DFARS provisions and clauses by reference number, clause title and date as prescribed by FAR 52.103. Contracting officers shall not normally include clause text information when specifying solicitation provisions and contract clauses for each procurement. Instances where clause text may be required such as contractor payment related clauses should be the exception. Compliance with proper payment procedures by Defense Finance and Accounting Service personnel may require ready access to clause text by incorporation into the applicable transaction set(s).

A provision for incorporation into transaction sets 840 and 850 has been developed to accomplish this purpose and is attached for your use. If the solicitation, order or contract requires lower level supplemental provisions or clauses, i.e., DoD Component, major command, and/or DoD Component contracting activity, those provisions or clauses will be called out separately in the appropriate transaction set(s).

The DAR Council is prototyping a DFARS on-line and it is available at World Wide Web address <http://www.dtic.mil/contracts/>. However, it is only available in "html" format. Access to the full text of FAR provisions and clauses is available to all trading partners 24 hours a day, 7 days a week electronically via the World Wide Web (WWW). The correct electronic address for the FAR is as follows:



Activity

WWW Home Page Address

General Services Administration

<http://www.gsa.gov/far/>

As is the case for solicitations and orders/contracts distributed by paper media, trading partners must rely on a hard copy version of the FAR/DFARS for the complete text of provisions and clauses incorporated by reference.

  
Delores "Dee" Smith  
Director Electronic Commerce, EC/EDI

Attachment:

As stated

cc: DUSD(AR)

February 8, 1996

INCORPORATION OF SIMPLIFIED ACQUISITION SOLICITATION PROVISIONS OR  
CONTRACT CLAUSES BY REFERENCE

The clauses and provisions of the Federal Acquisition Regulation (48 CFR Chapter 1) and the DoD Federal Acquisition Regulation Supplement (48 CFR Chapter 2) are hereby incorporated in this solicitation, order or contract by reference with the same force and effect as if set forth in full text.

Availability of full text provisions/clauses - The complete text of any or all of the clauses effective on the date of the latest Federal Acquisition Circular is available electronically from the following World Wide Web (WWW) Home Page. The complete text of clauses other than those posted on this Home Page may be obtained by contacting the cognizant contracting officer for the particular solicitation, order or contract.

Activity

WWW Home Page Address

General Services Administration

<http://www.gsa.gov/far/>